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ABSTRACT

This handbook is designed to give school administrators and teachers a basic understanding of law as it impacts on the public school of today. Therefore, the fundamental law in the areas of school liability, church-state relationship, community relations, student rights, teacher-school relations, and parent-school relations is set out in each section, often with clarifying examples. In addition, procedures or guidelines are laid out to help in dealing safely with situations with underlying legal implications. Whereas this handbook should be of assistance to administrators and teachers in dealing with their daily problems, it is not intended to replace but only to supplement the ongoing advice of legal counsel. As fact patterns are ever varying, as problems differ from school to school, and as the law is always changing, a school administrator will be wise to continue to seek the advice of legal counsel. (Author)

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WHAT TO DO TILL THE LAWYER COMES

A Handbook of School Law for the Seattle Public Schools

by
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General Counsel
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EA 008 199

PREFACE

This handbook was written to give school administrators, and particularly those in the Seattle Public Schools, an overview of the state of the law as it deals with the subject of education. It deals generally with the school districts of the state of Washington and specifically with the Seattle School District. It is only valid as a resource and certainly is not a substitute for the sound legal advice of your own lawyer. It is dated and probably will be outdated, at least in some areas, before it is off the press. That is the peculiar and exciting challenge of education law.

The author is deeply grateful to three of his law clerks, Paul Cunningham, Stuart Rolfe and Diana Thompson, for their invaluable assistance and to Superintendent J. Loren Troxel and Associate Superintendent Dr. Michael Hickey for their patience in reading and offering criticisms and additions. If ever a work were the product of a team, this is it.

Sally M. Little

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I. INTRODUCTION

A. Why You Need a Lawyer and a Knowledge of the Law

It was only a short time ago that the legal problems of education were almost exclusively business matters and perhaps complying with the general mandates of the State Board of Education. Seldom, if ever, was the professional educator personally confronted with legal problems other than those that might surround his contractual status. His role and that of the courts were well defined and seldom overlapped. Within the school community there existed a clear, supposedly natural, order with which the courts and others in the general society hesitated to interfere. Students had few, if any, rights other than those defined by educators. Teachers were held to a strict pattern of conformity, and each building administrator was the "law" in his particular domain.

Clearly, the days when the professional educator could be unconcerned with precepts of the law are gone forever. Court rulings expanding the rights and freedoms of students and educators, delicate school-community relations, and increased bureaucratization of education have all contributed to the closer relationship of law and education.

The concept of *in loco parentis*, which permitted the school to assume as much power over the student as that exercised by the child's parents, is dwindling in force. While the school is still responsible for the care, safety and welfare of its students, the school's parental power to discipline and control students has diminished in scope. The community, through the law, is redefining the role of the school in the educational process.

This closer relationship between law and education, which many educators have regarded as an unwelcome intrusion of the law into their exclusive domain, has created a great number of problems for educators who resent these distractions from their principal goal of educating students. It is because of these problems that many school districts have engaged the full-time or part-time services of an attorney to advise the district on the law as it touches all educational matters, and particularly to counsel educators in the law as it directly affects their role in facilitating the educational process.

B. How the Lawyer Can Aid the Educator

The lawyer is primarily a legal advisor who is skilled in decision making and conflict resolution. While he may, perhaps, be trained in education, he is not an educator and makes no pretense of being one. He views his role in the educational community as that of one who can provide a valuable service to educators that will allow them to get on with their principal occupation. The district's lawyer is the educator's lawyer in all matters where the law touches education.

C. What Services Can a Lawyer Provide?

First, in general, the district's lawyer can provide added certainty in making educational decisions that are influenced by the law. The building administrator, for example, who submits his new disciplinary code to his lawyer for review can be assured that the code will not only reflect the educator's professional concerns but will also be in accord with legal requirements. If these rules are subsequently challenged he knows he can rely on the lawyer to offer a good, and most likely successful defense. The burden of acting without knowledge of the law in a legalistic society is lifted from the educator's shoulders by the lawyer.

It is important to note that the primary responsibility for making educational decisions lies with the administrator responsible for the particular program and ultimately with the Superintendent and Board. The role of the lawyer is to give his best professional judgment to educators in arriving at decisions, with full recognition that the ultimate nature of the decision and the responsibility for its consequences must lie with the educator. The advice of the lawyer is given from the perspective of placing the district in the best and most defensible legal position in the event legal action ensues as a result of the decision. It is important to realize that the best educational decision in some circumstances is not always compatible with the most legally defensible decision. The prerogative for this final judgment lies

with the educator who must balance the legal advice of the lawyer with his educational judgment and the advice of other educators in a particular situation.

Second, the lawyer can aid in formulating law that is in accord with sound educational policy. Educational law has in the past century moved from one extreme to another. On the one hand, until the recent past the law of education was a limited body of somewhat rigid and doctrinaire rules which were largely in accord with the view of education as a process separate from those of the rest of society. On the other hand, recent decisions have fully applied the Bill of Rights to the process of educating young people and also demanded some reasonable relation between the rules of the education system and its espoused goals. The courts have injected the concerns of the greater society into the education process.

Between these two extremes is a middle ground which has yet to be adequately defined — an area in which the rules dictated by educational concerns mesh with the legal rules of the greater society. In this area an educator acting without the advice of legal counsel may be consistently hamstrung by the demands of the law which appear, without adequate interpretation, to run counter to his educational goals. Because opposing lawyers and the courts tend to think legalistically, the educator needs his own advocate who can assess his educational goals from a legal perspective.

Much of the conflict, for example, which has accompanied the student rights movement in public schools has resulted from the failure of educators to seek legal help in formulating their disciplinary policies. Most court decisions in this area have not ruled that the goals of the rules which have been overturned were unreasonable or undesirable. What the courts insist upon is that the rules be *necessary for the accomplishment of educational goals* (which goals are to be determined solely by educators), that they be administered fairly and that they be reasonable, i.e., that they bear some reasonable relation to educational and societal goals.

The educator who is genuinely seeking to create an environment conducive to education should not find himself at all hampered by these rules if he works them out with his lawyer. More important, he may add elements to the body of education law which provide a foundation for a rational education system. The educator can no longer ignore the greater society. With his lawyer he can establish a modus vivendi between the education community and the requirements of law.

Third, the lawyer can provide the educator with crisis

counseling. This, of course, is the role of the lawyer most often envisioned by laymen. By utilizing the services described above the educator can avoid most legal problems. When an unexpected or unavoidable problem arises he should expect his lawyer to provide immediate support. The lawyer is, above all, trained to cope successfully with conflict, with major and minor crises.

In the event of a major crisis, such as a racial incident which may have already set off a serious intraschool or school-community confrontation, the administration is responsible for organizing the necessary resources to resolve the conflict. The district's lawyer is a key part of the management planning team in dealing with it. He will work with school and community authorities to restore order and, more important, he has the capacity to initiate equitable legal proceedings to cool the fires of conflict so that negotiations between all parties can be properly conducted.

Hopefully, in the average educator's career there are few major crises. The success or failure of educational programs will more likely hinge on the handling of routine problems. If these problems are properly dealt with when they first arise there will be very few major crises to interrupt the education process.

In addition, educators must become informed on the basic tenents of education law as it exists today. This knowledge will enable them to deal in a modern manner with education problems and thus avoid the legal liabilities or complications that can arise from unwise or legally unsound decisions. Moreover, such familiarity will enable them to better understand the role of the school and the educator in the world of today.

D. About This Handbook

This handbook is designed to give school administrators and teachers a basic understanding of law as it impacts upon the public school of today. Therefore, the fundamental law in the areas of school liability, church-state relationship, community relations, student rights, teacher-school relations and parent-school relations is set out in each section, often with clarifying examples. In addition, procedures or guidelines are laid out to help in dealing safely with situations with underlying legal implications.

Whereas this handbook should be of assistance to administrators and teachers in dealing with their daily problems it is not intended to replace but only to supplement the ongoing advice of legal counsel. As fact patterns are ever varying, as problems differ from school to school, and as the law is always changing, a school administrator will be wise to continue to seek the advice of legal counsel.

II. SCHOOL LIABILITY FOR STUDENT INJURY

The threat of being held liable for student injury hangs as an ominous cloud over many school teachers and administrators. Unfortunately, knowledge of the law cannot eliminate all student injury. As long as students remain children and teachers remain imperfect, students will be injured while in school. Knowledge of law, however, can make an administrator aware of the areas in which the school is apt to be held liable for student injury. Armed with this knowledge the administrator can assist teachers in conducting school activities in a manner that will limit the possibility of school liability. Aided by this knowledge an administrator can more wisely determine whether or not the school or its students should engage in a particular activity.

A. Types of Liability Situations

The first instance in which the school district can be held liable is when a school employee or agent inflicts intentional harm upon a student. Thus, the school district can be held liable if a teacher uses "unreasonable force" upon a child.

The second instance in which a school district can be held liable is in an instance where a school employee's or agent's negligent behavior *causes* student injury. School employees are expected to perform their duties in a nonnegligent manner and therefore act as would a reasonable and prudent person in the circumstances. School employees are expected to act with care and with full awareness of dangers that might arise from their own conduct, from student conduct, and from the factors in the situation before them. If a teacher foresees an "undue risk" of student injury if a certain course of

conduct or situation is permitted to exist he must act in a manner to avoid such an injury. While the term "undue risk" is difficult to define, it is clearly the function of (*a*) *the magnitude of injury that can occur in a particular situation*, (*b*) *the chance of the injury occurring, and* (*c*) *the difficulty of avoiding the injury*. In the last analysis, the meaning of "undue risk" in a particular situation will be determined by a jury, often sympathetic to an injured child.

A school district will be held liable for student injury negligently caused by a school employee. Thus, a student in a well-supervised and orderly classroom who slips and breaks his leg on a dry, clean, well-maintained floor will not be able to recover in a lawsuit against the school district or his teacher. Similarly, if Eric, a well-behaved and quiet student, unexpectedly hits and injures John while the teacher is conducting an orderly and well-supervised classroom, John will not succeed in a lawsuit against his teacher or the school district. In neither of the above instances is the teacher or school district to blame for the student's injury as the injury could not have been foreseen or prevented.

Changing the facts in the above situations the legal implications could be quite different. Suppose the student in the former illustration had slipped on a wet or loose floor board or had slipped while engaged in a race during his teacher's prolonged absence from the room. Or suppose Eric had slugged John while the teacher was out of the room or after their teacher, cognizant of a fight, had neglected to separate the two fighting or feuding boys. In these instances the school district or teacher might easily be held liable for the injury because the teacher in these instances could or should have acted to prevent the injuries.

B. Liability for Student Injury

When a student is injured the persons who can be held liable are the individuals whose malfeasance or misfeasance contributed to the injury. Therefore, when a student is injured in the classroom because of teacher negligence the teacher whose negligence caused the injury can be held liable.

The principal or administrator will not usually be held liable for student injury in the above instance, as he would not generally have been the cause of nor could he have prevented the injury. If, however, the principal might have prevented the injury, as would be the case if he knew the errant teacher continuously acted in the negligent manner that caused the injury, the principal could be held liable as well. In almost all instances where a teacher or other school employee

is held liable for student injury the school district, by the principles of the law of "agency," can be held liable as well.

Because teachers or other school employees could be "wiped out" financially from duty-connected law suits, the Washington legislature has enacted statutes which permit school districts to relieve employees from such potential liability. Under RCW 28A.58.620 school districts are permitted to pay the legal costs and the costs of judgment in suits against employees who were acting with good faith and within the scope of their employment at the time of the incident giving rise to suit. In addition, RCW 28A.68.630 permits school districts to purchase insurance for employees to protect them against legal claims and actions arising out of their employment. The Seattle School District in Article II, Section I, and Article V, Section B, of the Collective Bargaining Agreements 1973 through 1976 has taken advantage of the above statutory provisions.

C. District Liability for Individual Actions

In most instances in which an employee can be held liable the school district can be held liable as well. Generally, however, the school district will not be held liable for student injury caused by another student. The reasons for this nonliability are that the school personnel are not generally the cause of student injury by another student and that liability cannot be generally imposed under the principles of the law of "agency."

The law of agency means that, in addition to being liable for the actions of its employees, a school district is also liable for the acts of its agents. An agent can basically be defined as an individual who performs a service for the school at the request of the school or with the approval of the school. A volunteer who tutors or supervises the playground is a school agent. In addition, a mother who drives students on field trips is a school agent. So is the student who drives other students from the school to a school-sponsored activity when the school does not provide alternative transportation and walking is not feasible.

D. Sphere of Liability

1. Time Element. The school, if negligent, can be held liable for student injury that occurs during the school day or during a school-sponsored or connected activity after regular school hours. Thus, a school district can be held liable for the injury of a student spectator at a Friday night or Saturday afternoon football game. Similarly, the school district can be held liable for injury that occurs when a teacher

takes a few of his students on a weekend plane ride or mushroom hike.

A school district, if negligent, can also be held liable for student injury that occurs during the period directly preceding or directly following the school day or a school-sponsored activity. Action, however, can be taken to avoid unduly extending the period preceding and following school during which a school can be held liable. Thus, students need not be allowed into the school building more than a few minutes before school begins. If students are instructed not to enter before a specific time and this rule is rigidly enforced the school will not be liable for the injury of the student who sneaks in.

Similarly, schools can limit the scope of their liability for student injury occurring on the school playground in the period directly preceding and following school. To limit playground liability a school should inform parents and students that students are only permitted to be on school grounds during certain hours and that school supervision will be provided only during these hours. Then, consistent with the above directive, the school should provide supervision only during the stated period. Such adherence is important if the school informs the parents that students should only arrive on the school grounds 15 minutes before the school begins and must depart immediately thereafter but nevertheless provides playground supervision regularly for 30 minutes before and after the school day, the school may be held liable for any student injury that occurs during the supervised period.

2. Space Element

a. Liability While Students are at School or at a School-Sponsored Activity. Quite obviously, the school if negligent can be held liable for student injury that occurs on the school grounds or in the school building. In addition, the school can be held liable for student injury that occurs at an off-campus school activity. Thus, if a Seattle school student is injured while on a field trip to a dairy or while playing football at a Seattle-Shoreline District meet held at a Shoreline school and the injury is due to the negligence of school personnel the Seattle School District can be held liable for such injury.

b. Liability While Students are in Transit to or from School or a School-Sponsored Activity. A school district can be held liable for injury that occurs to students while boarding, riding in or alighting from a school owned or school chartered bus. The school district can also be held liable for student injury that occurs while students are

riding to and from school activities in private automobiles provided that the school has solicited parental help in providing such transportation. Such liability can occur where a school has planned a weekday or weekend field trip to the State Capitol or the Seattle Symphony and has asked parents to assit with the driving.

As the school is liable for the acts of its agent drivers it should limit the opportunity for the imposition of liability in any manner it can. The school should, therefore, only permit those who have valid licenses and insurance and who are not known to be unsafe drivers to transport students. Driver insurance is a necessity, and if the school is held liable it can then recover from its agent who was driving when the injury occurred. In addition, the school should permit students to act as drivers for the district as seldom as possible.

Other than as discussed above, however, the school district is not ordinarily liable for injury that occurs to students on their way to and from school or school activities. Liability generally cannot arise here as the school lacks the power to prevent the injury. The school cannot prevent Johnny from hitting Mary two blocks from school nor can the school prevent Johnny from walking to school in the middle of the street or via a busy traffic route.

Even in the case of children walking to and from school the school can be held liable if an injury occurs that the school could have reasonably foreseen or prevented. Thus, even if the school ordinarily would not be liable to Mary if John beats her on the way to school, the school could be held liable if the school were aware that John had assaulted students numerous times on the way to school and did nothing to attempt to correct John's behavior. The school is not ordinarily liable for what occurs to a child after he arrives at home. However if a school lets a child out early without notifying the parent, the school (for example) could be held liable for injury suffered by an unsupervised six-year-old when he arrives home to an empty house. It could be foreseeable that by letting a young child out early and not notifying his parents that injury could occur to the child.

E. Review

Before turning to a discussion of the three basic situations in which a school employee or school district is apt to be held liable for student injury caused by school negligence, it is necessary to stop and review some of the basic material we have presented so far. First, in the introduction it was stressed that a school district or school employee can be held liable for student injury caused by intentional

acts or by negligence. It was explaired that a school employee can only be characterized as negligent if he has not acted as a reasonable and prudent person and that he will only be held liable for injury he should have foreseen and could have prevented. Sections B and C then discussed the individuals who can be held liable for student injury. The problem of "who is liable" will not be a problem in the ensuing discussions as in all examples both the district and employee will, if negligent, be held liable. Section D then focused on the effect of place and time of injury on school liability. This, also, will not be a problem in this section as the situations and examples below all deal with classroom or school-sponsored activities.

F. Basic Situations in Which a School District is Apt to be Held Liable for Negligence

The district is held to a high standard of care of its students because while students are at school, the school stands in the place of the child's parents (*in loco parentis*) as far as liability is concerned. There are generally three types of situations in which a school district and the school employee involved can be held liable for negligent injury to students. First, the school will be held liable if a student is injured because of the school's failure to adequately instruct its pupils. Second, the school will be held liable if the student is hurt because of the school's failure to adequately supervise its pupils. Third, the school will be held liable if a pupil is injured because of failure of the school to provide safe and well-maintained equipment. As school administrators have the power to insist that their teachers instruct and supervise students adequately and that the maintenance crews properly maintain school equipment, the administrator has the power to prevent student injury and to safeguard the school district's duty.

1. Liability for Failure to Properly Instruct Students. Teachers have a duty to adequately instruct their pupils in the safe use of potentially dangerous equipment and in the safe performance of physical skills. Failure to adequately instruct pupils will render the school district liable for student injury.

While all equipment and skills can be potentially dangerous if not correctly used or performed, instruction is most important in chemistry, industrial arts, photo developing and physical education. Teachers in these classes must be particularly careful to instruct their students in the correct method of performing skills and the correct

method of using equipment and must also develop safety procedures. Students in these classes, as in all classes, should be instructed in the use of an alternative procedure if the method being utilized by a student or students poses a possibility of injury.

Below are a few cases which give a feel of the way in which courts view the role of teacher instruction in determining liability. In *La Valley v. Stanford*, 272 App. Div. 183, 70 N.Y.S. 2d 460 (1947), an instructor sat in the bleachers and observed a boxing match in which one boy was fatally injured. The courts held the teacher liable for the student's death as it determined that the decedent should have been instructed in the principles of self defense. In *Mastrangelo v. West Side U.H.S. Dist.*, 42 P.2d 634 (Cal. 1935), a chemistry student was injured after the chemicals he had mixed exploded. The court held the instructor liable for the injury as he had not instructed his students in the selection and use of chemicals but had merely instructed his students to follow the general instructions in the textbook.

In *Meyer v. Bd. of Education, Middletown TP*, 9 N.J. 46, 86 A.2d 761 (1952), the result was different. Here the court dismissed a case involving a sixteen year old boy who was injured when a classmate turned on a power saw that he was cleaning. The dismissal was granted as the instructor had clearly instructed his students not to turn on the machines when other students were in the area and that only one student was to work on a machine at a time. Adequate instruction is, thus, a key to the avoidance of liability.

Recently, a new issue has arisen revolving around school liability for failure to instruct. Individuals have suggested that school districts should be held liable for students' failure to learn caused by school teaching methods. In hypothesizing on the validity of such suits it would seem that a school could be held liable if a child's failure to learn was the *school's* fault. If a nonlearner has been taught by competent teachers, if the school has structured its program to meet the varying educational, emotional, and physical needs of its children, and if the teachers have made a "reasonable effort" to teach the nonlearner, the child's failure to learn will not be considered the school's fault.

In hypothesizing what courts will consider a sufficient "reasonable effort" to avoid liability undoubtedly the fact that teachers have a number of students in a class will be taken into consideration. In determining the extent to which a school must structure its classes to meet the varying needs of its pupils to avoid liability the size of a school district will undoubtedly need to be taken into consideration. Large school districts can necessarily provide more specialized services than small school districts. Small school districts, however,

often can contract with larger school districts to provide specialized services for the children whose needs they cannot meet and must do this to avoid liability in this area.

2. Liability for Failure to Properly Supervise Students

a. The Problem of Supervision in General. Teachers have a duty to adequately supervise their students. If a teacher is absent from the room when injury occurs a court may easily hold the teacher negligent, reasoning that the injury would not have occurred had the teacher been present. Similarly, if a teacher has not corrected a potentially dangerous situation that was observed, or should have been observed by a teacher, the teacher may be held liable for consequent student injury: a court could reason that had the teacher taken ameliorative action the injury would not have occurred. The greater the possibility of danger and the greater the magnitude of potential injury, the greater the need for constant supervision.

Below are some instances in which the adequacy of supervision has been a key factor in determining teacher liability. In *Carabba v. Anacortes School District* 72 Wn. 2d 939, 435 P. 2d 936 (1967) a student was injured at a wrestling match held in a school building. The school was held liable as the injury had occurred when another student had applied a full nelson while the referee's attention was diverted. In another case the school was held liable for a death sustained in a game in which one boy takes a deep breath and holds it while the other squeezes him tightly around the chest. Although the object of the game was to render the first boy unconscious, the principal had known of the game and made no attempt to stop it. The playground was unsupervised at the time of the fatal incident.

In view of the potential for liability if injured students are deemed to be unsupervised it is well worthwhile to consider what is adequate supervision in three key school areas—the playground, the classroom and the lunchroom. In all of these areas the school must be generally aware of what is going on and prohibit students from engaging in potentially dangerous acts. While constant supervision of every child is generally an impossibility and is necessary in but rare instances, the greater the potential for danger the greater must be the supervision.

b. Playground Supervision. During school hours playgrounds should never be unsupervised. While the supervisor cannot be expected to observe all students simultaneously, he should move constantly around in order to be aware of what is occurring in all corners of the playground so that he can terminate potentially dangerous conduct.

If the playground is sufficiently large so that one individual cannot adequately patrol the area more than one playground supervisor must be used. Either certificated or noncertificated personnel may be used to supervise playground activity if they are reliable individuals, although the school district will be liable if they are negligent. Schools should not supervise playgrounds during the preschool and postschool hours and should inform parents of the lack of supervision during these hours if they desire to avoid liability for injury occurring at these times.

c. Classroom Supervision. Ideally, a teacher should be in a classroom with students at all times. If a student is injured while a teacher is away from the classroom the school district is very likely to be held liable. To lessen the likelihood of school district liability when a teacher is forced to leave the classroom a teacher should:

(1) have a student run the teacher's in-school errands whenever possible;

(2) be absent himself from the classroom seldom and only when necessary for as few minutes as possible;

(3) notify a neighboring teacher when planning to be absent from the classroom in order that the neighboring teacher can be on guard for unusual noises;

(4) never leave a classroom in which potentially dangerous equipment is present, e.g., an industrial arts classroom, a chemistry lab, a first grade class in which students are using scissors;

(5) never leave a classroom in which students are engaging in a potentially dangerous activity, e.g., wrestling.

In *Chappel v. Franklin Pierce School District No. 402*, 71 Wn. 2d 17, 426 P.2d 471 (1967), a student was injured at the initiation ceremony of a school-sponsored club held at a student's home. The school was held liable for the student's injury because the school advisor who regularly attended all meetings was not present at this particular initiation. School districts have also been held liable for inadequate supervision when:

(1) a student was injured in a classroom by pellets shot from an elastic band;

(2) a student was injured by a playground teeter board removed from its normal position by students and used in an atypical manner. The court in this case held that the playground supervisor could be held liable for the student injury whether she had actually observed that the board was removed or not, as in the exercise of her supervisory capacity she should have been aware of what was occurring on the playground and should not have allowed the teeter

board to be used in a potentially dangerous manner;

(3) a student was killed on a school playground by engaging in a game of "blackout."

d. Lunchtime Supervision. Because a Washington statute requires that teachers have a 30-minute lunch break, the question arises as to how the schools can enable teachers to enjoy their break on stormy days and still protect the safety of the children. If the school has a covered play area or a school lunchroom there is no problem as one teacher or a paraprofessional can be assigned to supervise during the teacher break period. If such facilities are unavailable the situation is more difficult. To deal with the problem a school could enlist the aid of responsible parent volunteers or high school students to supervise teacherless classrooms during the break period. Alternatively a school could permit students to play in the gym or study in the library under supervision. A school can permit students to stay in teacherless classrooms and eat lunch while a teacher or paraprofessional patrols the hall but, as this procedure poses the greatest chance of student injury, it should only be used as a last resort.

3. Liability for Failure to Maintain School Equipment and School Premises. A school is under duty to make the school building and grounds a safe place in which to go to school. Equipment such as gym equipment, shop equipment, chemistry equipment, and furniture must be kept in safe condition in order that it not pose hazards for school children. If a teacher notes that some school equipment has become potentially hazardous because of nonrepair the teacher must make every effort to obtain immediate repair. If the equipment cannot be repaired the teacher should not permit students to use it or must keep them away from the potentially dangerous object, whichever is appropriate.

The school grounds and building, as school equipment, must also be kept in a safe condition. If it is impossible to immediately correct a potentially dangerous situation, steps must be taken to keep students away from the dangerous locale. Such an uncorrectable dangerous situation often occurs when construction or repair activities are taking place on the school premises. In order to lessen the chances of student injury and school liability in this type of situation, students should be clearly instructed on several occasions to keep away from the potential danger area. In addition, "keep out" signs should be placed in front of the danger areas and these areas should be roped off from student entry.

In a number of decisions schools have been held liable for their

failure to make school premises safe for students. Thus schools have been held liable for their failure to lock doors to dark, secluded, dangerous rooms that were attractive to errant and curious students. Schools have also been held liable for student injury caused by pianos tipping over, staging caving in, and from student use of goggles known to be defective by the teacher. Liability was imposed in all these cases as the injuries were foreseeable and could have been prevented by prudent teacher action.

G. School Liability for the Use of Force on Students

In the previous section school liability for negligent activity was examined. It was pointed out that a school district can be held liable for student injury caused by its failure to provide adequate supervision, adequate instruction, or a safe school environment. Now we turn to school liability for what is known legally as "intentional injury."

The law protects an individual from interference with his person even if no harm is done to him by such interference. Thus, a person who touches another can be held criminally and civilly liable for his actions even if the person touched is not harmed. Because some individuals by virtue of their positions must use force to accomplish their objectives the law permits them to use force provided the force is moderate and reasonable. RCW 9.11.040 (4) states that force is lawful "[w]henever used in a reasonable and moderate manner by a . . . teacher, in the exercise of his lawful authority, to restrain or correct his . . . scholar."

1. The Use of Force to Accomplish an Immediate Objective. Teachers, of course, should never utilize force except as a last resort. If force is used as a tool where verbal requests would work the force will be deemed unreasonable. Occasionally, however, a situation arises where verbal requests are completely ignored by a student or obviously would be useless. In such an instance a teacher has the right to use a moderate and reasonable amount of force to accomplish his objective. What is "moderate" force will vary with the size and age of a student and the nature of the situation. Ordinarily, the force used should not be such that it would hurt a child. Nevertheless, in an emergency situation this might become necessary. Such an emergency might be said to exist if a child refuses to leave the school during a fire drill or if the ringleader in a disturbance refuses to leave the disorder area.

As force can be used if it is reasonable and moderate, a teacher

after unsuccessful verbal requests can use light force to put a student in his seat or make him leave the room. A teacher can also use force to disengage two fighting students or to move a student away from a dangerous situation (blasting, a deep hole).

2. The Use of Force as Punishment. Corporal punishment is undesirable and should only be used when other means of dealing with a child have failed. Whenever corporal punishment is used it must be "moderate" or else a teacher will subject himself to criminal or civil liability. Corporal punishment is not moderate in nature if it leaves permanent marks upon a child. In Washington corporal punishment can only be administered by a certificated person in the presence of another certificated person (WAC 180-44-020). While the administration of corporal punishment in violation of the Administrative Code might not subject a teacher to civil or criminal liability if the force was "moderate," it is, nevertheless, a factor that could be considered in assessing the fitness of a teacher to teach.

III. SCHOOL LIABILITY FOR NONSTUDENT INJURY

A. Liability for Injury to Employees

School employees who are injured in the course of their employment through the negligence of the school district or a specific school employee do not have a civil cause of action against the school district although they may be entitled to recover certain benefits under their contract with the school district. Employees injured on the job, depending on the facts, may recover partial salary compensation and medical benefits through the Workmen's Compensation Law (Industrial Insurance), the Teachers' Retirement System, or the Public Employees' Retirement System.

B. Liability to Business Visitors

A business visitor can be defined as an individual who enters the school grounds in the course of doing business with the school. Deliverymen and repairmen are school business visitors. Parents, the press, and interested citizens are guests and not business visitors.

The school will be liable for the injury of a business visitor caused by defective school equipment, a dangerous condition in the school building or a dangerous condition on the school premises provided that the danger was or should have been discovered by the school district. The school will be liable for injury to business visitors caused by employee negligence. The school will generally not be liable for injury to its guests caused by students unless the injury can be traced to teacher negligence.

C. Liability to Nonbusiness Visitors

When a guest is injured on the school grounds while attending a

public function the school will be liable in the same instances it would be liable to a business visitor. Thus, if the guest is injured by defective school equipment or negligent actions of a school employee while at a football game or graduation ceremony the school will be liable. The school is less likely to be held liable to a guest, other than a child, who is injured on the school premises when not attending an event to which the public is invited.

IV. LIABILITY FOR PROPERTY DAMAGE OR FOR STOLEN PROPERTY

Up to now we have dealt with school liability for personal injury on the school premises. We have also suggested ways in which an administrator who is aware of the principles of liability can act to lessen the likelihood of student injury or school liability. We now turn to a discussion of property damage, an all-too-common problem in schools today. Fortunately, school liability in this area is not as broad as schools may fear but will only be imposed in case of school negligence.

A. School Liability for Student-Caused Damage or Loss Occurring on the School Premises

The school is only liable for property damage or loss if the school district negligence is the cause of such loss or damage. Such negligence exists only in situations where the damage or loss was foreseeable and the school district could and should have acted to prevent such damage. Ordinarily, the school district lacks the control to easily prevent such damage and liability will not be imposed. School districts are not insurers and are not expected to devote their entire energies to guarding student property.

Take the example of a student car damaged in a school parking lot. The school would not ordinarily be liable for this damage as the school is not expected to provide constant monitors in the school parking lot, and even if it did could not always prevent car damage. Or take the example of John's glasses which were broken by Mike during a sudden fight in the gym class. The school would not

ordinarily be liable for the breakage as it usually could not have foreseen or controlled Mike's conduct. If, however, the glasses were broken following a prolonged fight between John and Mike in which the teacher in charge had not intervened or if the breakage had occurred during the teacher's prolonged absence from the room the school might well be held liable for the school's failure to supervise.

Passing from property damage to theft, we note that the school cannot usually be held liable for theft of student or staff property. The school, of course, must see that rooms are locked when no one is in them, that the school is locked at night, and that the students are provided with lockable storage lockers. If this is done and if school employees act reasonably when suspicious conduct comes to their attention the school will not be responsible for any theft that occurs.

While imposition of liability is unlikely if the school acts with care, adherence to the following and the use of common sense are helpful if the school is to avoid liability.

First, the school should provide a student a safe place for his possessions. This requirement is met if the school provides students with a lockable storage locker and teachers remember to lock doors upon leaving their classrooms.

Second, the school and its personnel should not accept responsibility for safeguarding student possessions at the request of a student. Once a school employee agrees to safeguard a student's watch or musical instrument he opens himself to liability if the object is later stolen or broken and if he is found to have been negligent in its care. If the school despite the possibility of added liability decides to take care of an object for a student it must put the object in a place where it is not likely to be damaged or stolen.

Third, the school must act to avoid foreseeable damage to student property. Thus, if the school is aware of a rash of thefts from lockers the school must actively seek the offender. Upon discovery the school should impose a sanction upon the offender that would appear to school authorities to insure that the individual would not repeat the act. Similarly, if the school is aware that a certain student is damaging the property of other students the school must act to discipline the offender to the extent believed necessary to prevent future misconduct. In addition, employees should investigate suspicious or potentially dangerous conduct that comes to their attention. If the school acts reasonably and tries to prevent any property loss or damage that is foreseeable and reasonably preventable it will not be held liable for student property loss.

B. School Liability for Student-Caused Damage to Neighboring Property Owners

Sometimes students tramp through a flower garden on their way to or from school or pilfer goods from stores near the school grounds. Property owners then contact the school demanding that the school pay for the damage or discipline its unruly students.

In these situations the school is not liable for the damage caused by its unruly students as the school lacks power to control and discipline students for misconduct off school grounds not school-related.

Although the school district cannot assist the property owners by paying for the damage or disciplining its students in these situations it can assist the property owners by giving them the names, addresses and phone numbers of the guilty students, provided the vandals are clearly identified.

C. Child and Parental Liability for Damage Caused to Property by Minors

Children eight years of age and older who damage or steal school property, student property, or the property of school employees can be criminally prosecuted for such damage. In addition, such children can be held liable in a civil action for the amount of damage they have committed. A judgment obtained against any Washington resident is collectible for six years within the state. Therefore, it is not financially useless to obtain a judgment against a minor who does not hold a job.

In Washington, under RCW 4.24.190, either or both parents of a minor can be held liable for up to $1,000 of damage caused by their minor child provided that the child was living with them at the time the damage was committed. The above statute can be effectively used in Justice Court prosecutions to force the parents of minor children to take responsibility for their children's transgressions.

V. RELIGION AND THE SCHOOLS

The First Amendment of the United States Constitution prohibits federal, state, and local governments, including school districts, from acting so as to inhibit the free exercise of religion or so as to assist or interfere in the establishment of religion. Article 9, § 4, and Article 1, § 11, of the Washington Constitution pose even stricter controls upon the use of school facilities and funds than does the United States Constitution. These provisions mandate that "all schools maintained or supported wholly or in part by public funds shall be forever free from sectarian control or influence" and that "no public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or the support of any religious establishment."

Reading these principles, it is clear that administrators must attempt to keep religion out of the schools as much as possible. Religion can only be admitted into the school in situations where there is no possibility of religious control or influence being present. Following is a brief discussion and resolution of some of the most typical church-state problems confronted by school administrators and teachers.

A. School-Directed Religious Activity

The decisions of the United States Supreme Court plainly indicate that a school cannot conduct Bible reading, prayer exercises, or religious activities for students whether participation in such activity is optional or required. If such school-directed religious activity were to be permitted the school would be helping to establish

religion and not maintaining the neutrality towards religion required by the United States Constitution.

B. Courses in Religion

Public schools, consistent with the Constitution, can teach a course on the history of religion provided that the course is taught objectively. In such a course students should be given exposure to religions of the Western and Eastern world and also assigned readings on agnosticism and atheism. Courses conducted in the above manner would not appear to be courses of "religious instruction" in violation of the Washington Constitution as they would not be courses designed to strengthen the religious convictions of the students.

C. Student Religious Activity

Students should not be permitted to hold religious meetings on the school premises before, during, or after school or to use the school premises to further any religious objective. Nor can students be permitted to pass out religious pamphlets on the school grounds. This prohibition is necessary as schools must not be used to help establish religion. On the other hand, students enjoy certain First Amendment rights, e.g., free speech, freedom of expression, freedom of assembly. If they wish to exercise these rights privately among their own friends or on their own time and without infringing or imposing upon other students this is permissible. This would allow students, then, to engage in such activities as Bible reading, silent prayer, etc., during the school day and on school property, but only subject to the above conditions.

D. Student Religious Exclusions

If a student objects to saluting the flag because of his religious beliefs he must be excused from this exercise. He may be required to remain silent and respectful.

In Washington under RCW 28A.05.030 a student must be excused from physical education if the dictates of his religion so require. Likewise, a student must be excused from school on religious holidays in order that he be permitted to worship with others of his faith. While a school has the power to excuse children to attend religious instruction courses the school need not do so if it does not wish to do so. If the school chooses to permit children of one faith to leave school early to attend religious instruction it must permit children of all faiths to do so.

E. Holiday Observances

At Christmas time the cleavage between religion and the school is highlighted. While some individuals view holiday festivities as cultural rather than religious, other students view holiday festivities as religious in nature. The following guidelines adopted by the Instruction Division of Seattle Public Schools accomplish a compromise between the two opposing forces and also appear to meet constitutional muster.

1. Activities and procedures which constitute practice of religious rites or which being so interpreted may embarrass any pupil because of his own religious beliefs should be avoided.
2. Activities and procedures which may be interpreted as religious indoctrination are also to be avoided.
3. Literature, history, art, and music with a general religious background and religious symbols may be taught for cultural reasons, but not for purposes of sectarian indoctrination.
4. Allowances should be made for pupils who object to participation in school activities which are a regular part of the curriculum but which are offensive to their own religious beliefs.

F. Use of School Facilities by Religious Groups

Religious groups should not be permitted to use school facilities during school hours. This rule is necessary to keep the educational process itself free from sectarian influence.

Provided that a school district had adopted a policy of permitting outside groups to use its facilities church groups must also be permitted to use school facilities on a space and time available basis provided that the use is not on a regular basis. While by permitting occasional religious services or classes on school grounds a school is able to keep its school free from sectarian influence, such entanglement becomes inevitable once the school becomes a regular meeting place for a religious group.

Whenever a school permits a church group to use its facilities the school must be careful to charge the church group a reasonable rental fee as school funds cannot be used in aid of religion. Such a fee must at least cover the cost of heat, lights and custodial service occasioned by such use. The school personnel must not assist the religious group in publicizing religious meetings held on school grounds nor should school personnel assist religious groups in the organization or conduct of such meetings. While school personnel can attend religious meetings held on school grounds they should not attend as

representatives of the school nor should they take a leadership role in such meetings.

G. Baccalaureate Exercises

Schools are prohibited from sponsoring baccalaureate exercises which are religious in nature. If an outside group chooses to sponsor a baccalaureate exercise at a school said group must pay rent as would any church group using the school facilities. Publicity for the baccalaureate exercise cannot be given at school. Teachers or school administrators can participate in a baccalaureate exercise provided that they do not do so as representatives of the school but simply in their private capacities.

VI. THE SCHOOL AND THE COMMUNITY

A. Entrance onto School Premises by Outsiders

School districts are created by the state in order to educate children. The state in delegating the power to educate to the schools has also delegated to the schools the power to decide how this end can best be achieved. In delegating to the school the power to educate the state has also thrust upon the school the responsibility for insuring the safety of the children in its care. From the above basic power and responsibility school districts derive their power to determine how to deal with outsiders in specific situations.

1. Outsiders in General. An outsider for our purposes can be defined as a nonstudent or nonemployee of a school district. Outsiders have no inherent right to enter upon the school grounds as the school exists to educate children, not to meet the needs of outsiders. If, however, the school holds an activity such as a football game or play to which the public is invited all outsiders must be permitted to attend with the exception of students under disciplinary action and individuals whom the school, based on past experience, has determined may be unruly and/or disruptive at the school event.

2. The Press. The press, as an outsider, has no right to be present at and cover school activities to which the public is not invited. Thus, the press has no right to cover school assemblies nor to observe classroom or extracurricular activities. If, however, the school invites the public to attend a school function the press may attend as well. Generally the press should not be permitted to talk to students without parental permission.

3. Parents. Schools by necessity must have some dealings with

parents, as only through such contacts can they best insure the education of their pupils. Parents, however, as other outsiders, do not have a right to be in the school at any time they desire **nor** do they have a right to sit in observation of classes. Quite obviously, a school cannot effectively conduct its classes if all the first grade parents simultaneously observe first grade. A school will find it much easier to conduct first grade if parents visit class one at a time. Nevertheless, if a school concludes that a policy of singular parental visitation is disruptive to the school educational program it may prohibit all parental visits. If a school which generally permits parental visitation on request feels that the visit of a particular parent will be upsetting because of the nature of the parent or teacher, the school need not allow the visit to take place.

The visits of some parents to the school may be disruptive or upsetting. This may happen if a parent is emotionally disturbed. The school has the power to require that disruptive parents only enter upon the school grounds or building if they first have set up an appointment. If such a parent persists in barging into school despite all attempts to schedule his visits, a school can call the police if the parent does not leave when requested to do so. Criminal trespass is a misdemeanor.

4. Expelled and Suspended Students. Expelled and suspended students have no right to enter upon any school premises in their school district nor to attend any school-sponsored activities, including those to which the public has been invited. Such students have a lesser right to attend public functions than other outsiders as they are being disciplined by the school for their past transgressions.

5. School-Age Nonstudents. As the function of the school is to educate its students and as nonstudents can often be a disruptive influence upon the educational process, nonstudents, as other outsiders, have no right to be on the school grounds or in the school building. If a nonstudent persists in trespassing despite repeated warnings to refrain from entering upon the school grounds and repeated requests to leave the police may be called for assistance. If police assistance has proved futile in the past and if a nonstudent poses a threat to the physical safety or health of students or staff, or a threat to property on the school premises, or if he markedly interrupts the educational process, legal assistance is in order. The district's attorney can help alleviate your problem by obtaining an injunction against the intruder barring him from entering the school grounds. Such an order can also be obtained against nonstudents who

harass and assault your students on their way to or from school.

While the school will need to rely upon the assistance of an attorney to obtain an injunction, it is, nevertheless, helpful for school administrators to be familiar with the legal steps and procedures involved in such an action. The first order your attorney will seek from the court is a temporary restraining order ordering the nonstudents to stay off your school grounds and ordering the nonstudents to appear in court on a "set day" (usually in about ten days) to show cause why the court should not grant a temporary injunction. If the nonstudents do not show up in court on the "set day," which is usually the case, the court will grant a temporary injunction ordering the nonstudents to stay off the school premises. If the nonstudents do appear in court on the "set day" and request a hearing, a hearing will be held on whether a temporary injunction should be issued. Witnesses will be required at this hearing to show to the court the problem created by the outsider or outsiders.

Once a temporary injunction has been issued the nonstudents will be in violation of a court order if they return to your school grounds. If the nonstudents do return to the school grounds after the issuance of a temporary injunction you must again contact your attorney. He will then initiate "contempt" proceedings against the nonstudents and the nonstudents will be ordered to appear in court to show why they should not be held in contempt of court. A hearing will then be held on the matter of contempt. If the court finds that the nonstudents have violated the temporary injunction the court will hold them in contempt. The court will then either sentence the offenders immediately to jail or the Youth Service Center or impose a suspended sentence. If the nonstudents are immediately sent to jail your troubles are presently over. If, however, the nonstudents are given a suspended sentence but still return to the school grounds you will again need to contact your attorney. This time he will be able to insure that the intruders are detained.

If an individual serves time in the Youth Service Center or jail for contempt of the temporary injunction it is unlikely he will return to the school grounds again. If he does, however, contact your attorney for renewed initiation of contempt proceedings. The intruder can again be detained.

B. Use of School Facilities by Outside Groups

As the school exists for the education of school-age children, outside groups have no inherent power to use a school facility. Once the school decides to permit one group to use the school building it

must permit all groups subject to the following limitations:

1. The school need not permit an outside group to use a school facility if there is not time or space available.

2. The school need not permit a group to use the school facilities if the school has reasonable grounds to believe that the outside group would damage the school premises or would foment a disruption.

3. The school must charge a fee for rental that will at least reflect the out-of-pocket expense incurred by the school district by reason of such usage.

C. The Levy and Other Ballot Issues

Under both Initiative 276 and RCW 28A.58.610 a school district is prevented from using school funds or facilities for influencing the result of a school election. Under Initiative 276 a school district cannot use its facilities for influencing the result in any election or for assisting in the election of anyone to office. While the above statutes do create problems for school districts at levy time, they nevertheless permit schools to inform the public about the school program and the operation and maintenance of the school. As many of the activities that a school desires to engage in at levy time appear to fall near the vague boundary between "information giving" and "electioneering," it would be desirable if we could give schools the go-ahead or stop signal on each contemplated pre-election activity. Unfortunately, this handbook is not long enough to settle the validity of all the possible forms of pre-election activity. Below, however, are some guidelines to assist you in determining the legality of proposed activity at election time.

1. The school can send information to parents or the general public that discusses the school instructional program and/or the operation and maintenance of the school. A school in such a bulletin can mention the services or programs which would need to be cut back if the levy fails and also state the date of the forthcoming election.

2. The levy, other ballot issues, and electoral races can be discussed in the classroom provided that all viewpoints are presented.

3. The school can sponsor assemblies or public meetings during which both sides of a ballot issue are discussed and/or in which the candidates from all parties are given the opportunity to speak.

4. Students, teachers, and administrators may not use school facilities to make or display election propaganda. The levy committees cannot meet in the school unless the anti-levy committees have the same privilege. Signs, memoranda, or the like, stating the reasons

why voters should cast their votes for or against a particular ballot issue or candidate cannot be made at school, made with school materials, or displayed at school. PTSA notices printed on school paper or sent home with students cannot urge support for the levy.

5. If a teacher or school administrator wants to support a ballot issue he must state that he is doing so as an individual. It is permissible for him to allow the press to say, "The following individuals, who are teachers at Muir, support the levy." He should not permit the press to say, "The teachers at Muir support the levy." A school employee cannot devote school time to political activities.

6. If the PTSA takes a position on a ballot issue or for or against a particular candidate that position may not be disseminated by the school.

D. Dealings with the Police

Unfortunately, in this day and age the need for police assistance is all too frequent. In the Seattle Public Schools whenever a student commits a crime that poses a danger to students or staff, i.e., assault, arson, theft, selling of drugs, or to property on the school premises, the administrator in charge should contact School Security who, in turn, will contact the police. In other school districts such crimes should be reported directly to the police. Evidence of crimes obtained from students should be turned over to the police.

Police have a right to question students at school, even though the student's parents are not present. If the police desire to search a student's person or property the school should request that the police show a warrant designating the object of search. If the police do not have a warrant and nevertheless insist that the school permit the search, the school should cooperate with the police. Having been ordered to cooperate, the school will not be held liable if the search proves unlawful. The following guidelines apply to district-police relations in Seattle:

1. The general basis for the relationship between the Seattle Public Schools and Seattle Police are those prescribed in detail in *Guidelines for Dealing with Emergencies*, as revised. These Guidelines are available in every school and are generally well-known by all building administrators.

2. School administrative personnel will cooperate with police officers and provide assistance when the officers' entry to the building is based upon:

a. a warrant for the arrest of an individual
b. parental permission
c. presence of a juvenile division officer normally assigned to that building

3. It is extremely important that police officers notify the principal, or other building administrator in charge, *upon* entering the building. The principal alone has control of the building and complete knowledge of the situation in the building at any given time. His foreknowledge of police presence in the building can do much to facilitate their operation and still prevent escalation of an existing situation.

4. In view of recent Supreme Court decisions, access to student records is more restricted than it formerly has been. With the proper court order pertinent student record information will be made available to police officers as required. However, in the absence of a court order, and upon proper identification of the police officer to school authorities, the school will provide the officer with the address, telephone number, parents' names, birth date of the student, and will verify attendance at the school.

5. With reference to the matter of interrogation of students by police officials, the Seattle School District encourages the police to interrogate citizens of student age in their homes. However, the school will permit the interrogation of students by police provided the police officer has permission of these student's parents to conduct the interrogation. In the event either of the above conditions cannot be met, the student will be made available to the juvenile officer or officers assigned to that school for interrogation in the presence of a school official.

6. The situation in most urban schools, especially secondary schools, is a delicately balanced one which can be disrupted in major proportion by certain incidents. On occasion it may be necessary that uniformed officers pursue a suspect into a school building. The need for pursuit must be weighted against possible consequences of such pursuit. Discretion should always be used. If the offender is identifiable, and the need for apprehension is not immediate, apprehension may be deferred. In instances where suspects are pursued into a school building the officer should be prepared to show that such pursuit was reasonable.

7. In most circumstances, the building principal's contact with the police will be made initially to the School Security Office of Seattle Public Schools, which will in turn notify the police if such action is

warranted. With regard to those circumstances where a sizable police unit is called in, two concerns should be recognized:

a. Sometimes in the interval between notification of police and their arrival the problem situation may change to such an extent that it may be preferable to refrain from overt police action. Every effort will be made by school authorities to exercise extreme good judgment in requesting mobilization of police forces.

b. When the police are requested to take over a situation they naturally are the decision makers, but the building principal is nevertheless required to convey to those authorities his own best assessment of the situation. This is intended as advisory in nature in order to convey information regarding nuances in the situation which may not be apparent to the police.

E. Commercial and Noncommercial Solicitation by Outside Groups

The school district, as a municipal organization, is prohibited by the Washington Constitution, Art. 8, § 7, from making a gift of public funds to private individuals. The school cannot permit the use of its facilities to enrich private individuals or groups. In order to comply with the above constitutional provision the school should not permit outsiders to sell goods on the school grounds or at school activities nor should the school assist in the sale of such goods. Thus, the school cannot permit outsiders to "peddle" goods to students on school grounds, nor should the school make oral or written communications to students or parents regarding such wares. Schools can, nevertheless, permit outsiders to advertise in the school newspaper provided the outsiders pay for this service. The opportunity to advertise is provided to all merchants on equal terms provided the ware advertised is suitable for advertisement in a student paper.

F. The Law

1. Jury Service. Washington teachers by law are excused from jury service. Nevertheless, if a teacher receives a summons for jury service the teacher must contact the clerk of the court from which the summons issued to determine the appropriate procedure for obtaining an exemption. Contract provisions govern whether or not a teacher who is called for jury service must request exemption if he or she desires to serve.

2. Subpoena. Teachers, as other individuals, can be "subpoenaed" to testify in court or at a pre-trial proceeding entitled a "deposition." Teachers, as other individuals, can also be ordered to provide their books, documents, records, paper or other tangible

things for examination at trial or prior to trial. Any attorney who has commenced a lawsuit has the power to subpoena witnesses to give or produce evidence which is *relevant* to the subject matter of his lawsuit. If, however, an attorney has not yet commenced a suit but is only investigating relevant facts he does not have the power of subpoena and school employees are under no legal obligation to give him information. If an attorney who has commenced a lawsuit asks for information without utilizing a subpoena he should be requested to subpoena the information. By requiring an attorney to subpoena information, school employees can protect themselves from possible legal liability if the person about whom such information relates later claims that the information given was "libelous" or "invaded his privacy."

Generally, if you are subpoenaed it is best to immediately contact the district's lawyer. He can generally protect you from giving information which is humiliating or embarassing to you, which is irrelevant to the issues in the lawsuit and which is not easily accessible to you. If such production of documents is costly he can secure for you the reasonable cost of producing these goods.

When a subpoena is delivered to a school for a teacher or a pupil the school should let the messenger deliver the subpoena to the person to whom it is addressed. The school should not accept the responsibility of delivering a subpoena to a student, teacher or other employee who is or is not at school on the date of delivery of the subpoena.

VII. STUDENT RIGHTS, RESPONSIBILITIES AND THE REGULATION OF STUDENT CONDUCT

It is in the area of student rights that school law has shown the greatest change in the last decade. Formerly, a student could be suspended or expelled from school whenever a principal felt that the student was intolerable or had committed an unpardonable act. No review of the suspending agent's decision was necessary, nor did the student or his parents have the right to question the validity of the school's decision to suspend or expel. Moreover, if the parent felt his child was treated unjustly he would get no relief in court. Until recently courts would not review the reasonableness of a school decision.

While schools no longer have the "dictatorial" powers of yesterday, principals and teachers still have ample power to control the conduct of their students and to insure that their students get a good education. Unruly students can still be dismissed from school as schools still have the responsibility of educating their students. Teachers still have the obligation to maintain good order and discipline, as without good order students cannot receive a solid education. Let's turn now to a detailed analysis of the status of students' responsibilities and rights today.

A. Student Responsibilities

1. Attendance. As a general rule, any Washington child from the age of eight to the age of eighteen is required to go to school unless he has met state graduation requirements or received a certificate of educational competence. There are a number of exceptions to the

above rule. First, a child of age fifteen to eighteen need not attend school if he is engaged in a remunerative occupation. Second, a child may be excused by the School Superintendent from school if he has obtained reasonable proficiency in the required courses of the first nine grades of public school. Third, a child may be excused from school if the Superintendent believes he is physically or mentally unable to attend school. These attendance rules are spelled out in RCW 28A.27.010.

According to WAC 180-40-075 attendance at school is a responsibility of all students. If a student refuses to attend school on a regular basis a school can suspend him, often an effective punishment for a student who enjoys the social milieu of school but does not enjoy the discipline of school. Alternatively, a student who does not attend school regularly can be referred to the Juvenile Court. Such referral seldom has the effect of increasing school attendance.

2. School Rules. WAC 180-40-080 emphasizes that all students are expected to conform with the reasonable written rules and regulations of a school and with state and local laws. Failure to comply with school rules, provided the rules are "reasonable," is grounds for suspension or expulsion. (For a discussion of what is a "reasonable" rule, see Section VII E.)

Under the Washington Administrative Code all schools are expected to develop written rules and regulations. If a school seeks to discipline a student for breaking an unwritten rule, a student may be able to successfully argue that he lacked notice of the school rule and thus overturn the school's disciplinary action. If the student, in fact, did lack knowledge of the school rule it is unfair to punish him for his conduct in transgression of the rule.

In drafting rules, schools should make rules suficiently detailed to give students notice of what is required of them. Yet such rules must also be sufficiently open-ended or general to cover unexpected "unacceptable" behavior in which students may engage in the future. Thus rules should contain both generalities and specifics. All students should be given a written copy of school rules, and school rules must be orally discussed with the students. Only if this is done can a school be assured that students have notice of what is acceptable behavior.

3. Disruptive Behavior. Students in the Seattle Schools and all other schools are expected to refrain from behavior disruptive to the educational process. They cannot be permitted to act in a way that interrupts the learning of other students or that requires a teacher to devote an undue amount of time to controlling their behavior. While if a student "acts out" sporadically a short disciplinary action may be

desirable, if a student continuously "acts out" in class and makes teachers feel "I cannot teach well when he's in my class," longer term disciplinary action is warranted. The following are some examples of disruptive acts that could warrant suspension or expulsion from a classroom or a school were they to occur on a *continued* basis:

a. Talking to other students during class in a manner that distracts other children from doing their work.

b. Talking while the teacher is talking in a manner which distracts the attention of other students.

c. Refusal to obey the directives of the teacher in a manner that causes other students to disregard the teacher's directives.

d. Arriving at class tardy in a manner that causes other students to cease working.

e. Acting in a manner that is contrary to school or class regulations and which causes a teacher to spend an undue amount of time dealing with such conduct.

4. Crimes. Students are prohibited from committing crimes both on and off the school grounds. The school can discipline the student who commits a crime at school during school hours, at school during a school extra-curricular activity or at an off-campus school activity. The school, however, can only discipline students who commit crimes at other times and places if such misconduct is to some degree school related. Thus, the school cannot discipline a student who sells drugs to another student in his home. Nor can the school discipline student "A" who assaults student "B" Saturday night at a movie, even if the enmity of student "A" for student "B" may have arisen at school. The latter crimes are not sufficiently school-connected to permit school discipline.

The school, however, has the power to punish students who have failed to live up to their school connected responsibilities and thus has the power to punish the following:

a. The student who assaults a fellow student or a school employee in a school building at any time other than a time during which the school building is being utilized exclusively by an outside group.

b. The student who damages school property at any time.

c. The student who assaults another or damages his property while at an on- or off-campus extracurricular activity or while on the school grounds during school hours. (Certainly, however, a student cannot be punished by the school for an assault occurring on

school grounds when school is not in session and there are no school personnel present as this would not be a school related crime.)

d. The student who assaults or converts the property of a school student or employee who is en route to or from school or en route to or from a school-sponsored activity. (Here a school connection exists, as the school has the statutory right under RCW 28A.67.100 to hold students in strict accountability for any disorderly or antisocial conduct on the way to or from school.)

B. Student Procedural Rights

The term "student procedural rights" refers to the rules and regulations to which any student subject to disciplinary action has a right to insist that the school adhere. They are embodied in the Washington Administrative Code and in the written rules of each school district.

As student procedural rights are dealt with in detail in the Washington Administrative Code and in the written regulations of each school district it is unnecessary to spell out these rules here in detail. These regulations permit a school to exclude a student from a class or school for as long as three days and for as many as six days in a semester without giving the student formal notice or an opportunity for a hearing. If the school desires to exclude a student for a longer period of time the student must be given notice and an opportunity to have a hearing. For purposes of the Code, an exclusion from a supervised lunch is tantamount to exclusion from a class and would entitle a student to have written notice of the charges against him and a hearing. Then, too, if a student is excluded from an extracurricular activity for which he receives academic credit he is entitled to notice and a hearing and all the procedural protections a hearing embodies. If a student is excluded from a noncredit activity, however, or is merely denied a privilege in a credit-bearing activity class, i.e., the right to participate in a scheduled meet, the right to go on a field trip, he is not entitled to a hearing. He is, however, entitled to have a conference with a designee of the School Board on the validity of the disciplinary action and to formally protest an unfavorable disposition to the School Board itself.

To some extent the procedural steps required by the Code are cumbersome and annoying when compared to the former days of "principal power." Yet these steps or their equivalent are constitutionally required in order to insure that students are treated with fairness. Moreover, utilization of these procedures is beneficial in several ways.

First, the notice requirement frees the school to more fully think out the reasons for and the validity of a proposed disciplinary action. In addition, the notice requirement insures that a student's parents will be fully informed of the nature of their child's misconduct.

Second, the notice and hearing requirements enable students to experience democracy in action and to be treated in an adult manner. Through the school disciplinary process, as in a court, the student has the opportunity to present his position, to examine those whose position he challenges, and to be judged by an impartial authority.

Third, the hearing process can have a salutory effect upon a parent who requests a hearing. Some parents cooperate much better with a school after they have an opportunity to be heard. Other parents are able to come to grips with a situation as it exists after they are graphically presented with the facts at a hearing. Still other parents use the hearing incorrectly, yet beneficially, as a time to seek appropriate help or guidance for their child.

Fourth, the requirement of a hearing may enable the school to correct a mistake in the few instances where a school has wrongfully suspended or expelled a student. Sometimes in an explosive situation a principal may act without full awareness of all the facts. As education is an indispensable tool in today's society, it is only just that the student be given the opportunity to present the true facts before he is subject to the extreme sanction of suspension or expulsion.

C. Student Substantive Rights

Student substantive rights include the rights given to students by individual school districts, the Washington Administrative Code, Washington statutes, the Washington Constitution, and the United States Constitution. It is the acknowledgment of the existence of student substantive rights that has caused the recent cheering and bellicosity from students and the complementary booing and trepidation on the part of school administrators. Such reactions, however, are overreactions and are unwarranted on the basis of the actual law. While students do have more substantive rights than in the past, neither students nor adults can exercise their rights if such exercise will "disrupt the educational process," i.e., interfere with the opportunity of other students to receive an education or disrupt the order in the school. Let us now turn to a fuller examination of the rights of students in order to discover and examine their meaning.

1. The Right Not to be Discriminated Against Because of Race, Religion or National Origin. The meaning of these important rights has become self-obvious in the last few years and thus need not be discussed here.

2. The Right Not to be Discriminated Against Because of Economic Status.

3. The Right Not to be Discriminated Against Because of Sex. Under the Washington Administrative Code and the United States Constitution students have the right not to be discriminated against because of sex. Essentially, this means that both boys and girls must be permitted to take the same courses. Thus, girls must now be permitted to take shop and boys must be permitted to take home economics. The nondiscrimination requirement also mandates that the sports programs offered for boys and girls must be comparable. While under the law schools can probably still maintain separate girls' and boys' athletic programs, wherever there is an intramural, extramural, or instructional program existing for boys in a sport a parallel program must be offered for girls. Moreover, wherever the boys' and girls' athletic programs in noncontact sports are not comparable girls who are as competent athletes as boys possess a right to participate on boys' teams.

While students cannot be discriminated against on the basis of sex, the anatomical and psychological differences in the sexes mean that boys and girls can be treated differently when there is a rationale for such treatment.

4. The Right Not to be Discriminated Against Solely Because of Pregnancy and Marital Status. A school cannot deny a student the right to attend school or participate in extracurricular activities *solely* because he or she is married or a parent. To do so would be to violate the Washington Administrative Code. Nor can a school deny a student the right to participate in extracurricular activity because the school feels the student should spend more time with his family. This is a private matter which the student himself should decide.

School regulations in the area of pregnancy and marital status must be limited to regulations which are aimed at protecting the health of the pregnant student or the educational process itself. The school, therefore, is fully justified in requiring pregnant girls who desire to attend school to obtain medical certificates stating that attendance at school will not be dangerous to their health. In addition, a school can exclude a pregnant student from school *if* the school can show that the attendance of the pregnant student prevents teachers from teaching and students from learning. This burden of proof will undoubtedly be difficult for a school to meet.

5. The Right Not to be Discriminated Against Solely Because of Previous Arrest or Previous Incarceration. The Washington Administrative Code prohibits a school from discriminating against a student

solely because of arrest or previous incarceration. The school, however, in dealing with a student has a right to punish for and take into account "crimes" that were committed during school hours or that are school related, as discussed in Section VII.A.4 of this handbook. Moreover, the school is justified in treating a student who has been arrested or convicted somewhat differently than other students when this is necessary for the safety of other students.

6. Freedom of Speech. Students, as all citizens, possess a First Amendment right of freedom of speech. Students must, therefore, ordinarily be permitted to express the type of opinions that they desire and can never be punished for the ideological content of their speech. Thus, students cannot be punished for expressing ideas that are contrary to those of the school administration. The freedom of speech of students, however, as of all citizens, is not open-ended and can be regulated. Student speech can be limited as follows:

a. Libelous Speech. Students can be prohibited from or punished for making libelous statements. (A libelous statement for our purposes can be defined as a false statement, damaging to the reputation of another, which is known to be false when it is made.) Statements such as "she lied," "she has V.D.," or "he was arrested," if false, are libelous.

b. School Meetings. Student meetings at school can be limited to those that are a part of the formal educational process or those meetings authorized by the principal. A meeting is a part of the formal educational process if it is a meeting necessary to fulfill course objects, i.e., a meeting of students who are working together on a class assignment. Meetings of French clubs, current-event clubs, and the like, although having an educational objective, are not school meetings which are a part of the formal educational process.

The principal has the right to limit student meetings on the school campus to meetings connected with the educational process, as the school exists to foster the school educational program and not for other purposes. Once a principal decides, however, that a student group whose objectives are not related to the educational program can use the school facilities, he must permit all such student groups to use school facilities, time and space permitting, and provided he does not have reason to believe that a particular group would be unruly or damage the school building.

c. Disruptive Speech. Students can be prohibited from making speech that will disrupt the educational process. Thus students can be prohibited from speaking at a time, in a place, or in a manner that will

interfere with teaching, i.e., shouting in the halls, talking while the teacher is talking or while other students are working. In addition, the content of a student's speech can be regulated if the nature of the speech threatens to cause material disruption in the school. Ordinarily the content of a speech will not cause disruption and thus a student must be permitted to express his beliefs provided he is doing so at an appropriate time and place. Occasionally the content of a student's speech may cause an explosive situation. Thus a student who persists in talking about the inferiority of blacks or wearing a Ku Klux Klan insignia in a racially tense school can legitimately be banned from doing so. And a student can be banned from calling other students names when in the past such name calling has led to physical encounters. The key in this area is disruption. The principal has a duty to prevent disruption in the school and may suppress speech if this is necessary to prevent disruption. (A student who disobeys the directive of an administrator and continues to talk in a situation where he has been ordered to stop may be suspended for failure to obey the lawful directives of school personnel.)

The tension between free speech and school discipline often comes to the fore during school patriotism ceremonies. Students have a right not to salute the flag or sing the National Anthem if doing so is contrary to their religious beliefs or political and philosophical convictions. Students should not be made to say what they do not believe. Students, however, must be quiet and respectful during patriotism ceremonies as this is required by statute and is not constitutionally invalid. By insisting that students remain quiet and respectful during flag exercises the school is not infringing upon freedom of expression as the students are not being made to say anything contrary to their beliefs.

7. Freedom of the Press. Just as students have a right to express their opinions by speaking, they also have a right to express their opinions in writing. The limits upon freedom of the press are the same as on freedom of speech in that students can be prohibited from making libelous comments or from disrupting the educational process.

Thus students have no right to pass out pamphlets during class or to pass out literature the content of which will almost assuredly lead to an explosive situation, such as the speech described in Section VII.C.6.c. In addition, students can be prohibited from distributing obscene publications. Whether a publication is obscene is not determined by whether the publication has off-color language but by whether the publication viewed as a whole is obscene. The standard for judging obscenity is different for juveniles than for adults.

In Seattle Public Schools students are permitted to pass out literature without first submitting the literature to the principal or a review board for examination. If a school district prefers not to permit students to pass out literature without first obtaining administrative approval, the school should seek legal advice in order to insure the review procedure established or adopted by the school passes constitutional muster.

In regard to student publications written and published as part of a course or an extracurricular activity the school has the right to control the general subject matter with which the paper will deal. The school can also require that the publication not be libelous or obscene. The school, however, cannot censor the viewpoints expressed by the students in the publication provided that expression of a specific viewpoint does not contribute to disruption in the school.

8. The Right to Petition the School or Other Units of Government for the Redress of Grievances. Students, as all citizens, have a right to express their dissatisfactions to government officials. Thus no disciplinary action can be taken against a student who complains about school policy to a school administrator, school board, superintendent of schools, governor, senator, or any other public official.

9. The Right to Assemble Peacefully. While students do not inherently have a right to use school buildings for their meetings (as discussed in Section VII.C.6.b) they do have a right to gather in groups to discuss common problems provided that their assembly is peaceful and not disruptive of the educational process. In accordance with the above principles, the school can disperse a student meeting if the students are unruly. Moreover, the students do not have a right to assemble during the time they are assigned to class, nor do they have a right to assemble in a manner that prevents other classes from continuing in session. Students have no right to assemble in noisy blocks in the hall, thereby preventing passage and/or the conduct of nearby classes.

10. The Right to be Secure in Their Persons from Unreasonable Searches and Seizures. Students, as all citizens, have a Fourth Amendment right to be secure in their persons against unreasonable searches and seizures. The Fourth Amendment, however, has been applied less stringently in the schoolhouse than in the outside community because the school has the duty to protect its students and because the school is sometimes the location of many of the common objects of search.

a. School-wide Searches of Lockers or Desks. A school-wide search can be defined as a general search for missing or illegal articles which does not focus upon a specific student or group of students. As lockers and desks are property of the school the school has the right to make a school-wide search of these areas at any time. While making a school-wide search, however, the school has no right to search through the student possessions, such as bags and brief cases located within the desks and lockers.

b. Searches of the Possessions, Lockers, and Desks of Specific Students. The school should not search a locker or desk assigned to a particular student for objects therein unless the school has reasonable cause to believe that a crime has been committed or a school regulation broken by such student. Such reasonable cause exists if the principal has been informed by an individual whom the principal feels is telling the truth that a forbidden object or an object stolen from another student, school employee, or the school, is in the student's locker or desk. When reasonable cause exists to search, the school should attempt to conduct the search only in the suspected student's presence. If, however, the suspected student is not in school the school can conduct the search during school hours without his presence.

c. Searches of a Student. The school has a right to search a student or to ask him to empty his pockets if the school has reason to believe that the student has a forbidden object or an object stolen from another student, school employee, or the school, in his immediate possession.

d. Searches of a Student's Auto. The school, if it has reason to believe that a student has a forbidden object or an object stolen from another student, a school employee, or the school in his car, can search the student's car provided the student is present and the car is parked on the school grounds. If the student's car is off the school grounds police should be called to conduct the search if the item in question is an illegal object or the fruit of a crime.

11. The Right to Smoke. Students have no inherent right to smoke on school premises. Schools can prohibit or regulate smoking if they feel it is a fire or health hazard.

12. The Right to Drive. Schools cannot prohibit students from driving to school. Schools, however, can adopt safety rules regulating the use of cars during school hours. If a school determines that the use of cars during the noon hour poses a tardiness problem or a safety hazard the school has a right to prohibit the use of cars during the school lunch hour.

13. Freedom of Dress. The courts are divided on whether or not students have a right to dress and wear their hair as they please. Nevertheless, it is clear that Washington schools cannot regulate student dress or hair length unless they pose a safety or health hazard or disrupt the educational process. Examples of outfits that might constitute a health hazard are long, loose hair in an industrial arts or cooking class or scanty clothes worn in the winter. It is difficult to envision what outfits are sufficiently extreme to be disruptive of the educational process. Scanty outfits that distract teachers from teaching or students from learning could be an example.

D. The Rights of Eighteen-Year-Olds

Eighteen-year-olds, as all students, need to comply with the rules of their school. As school rules are adopted to insure that students receive an education and to guarantee a safe and healthy learning atmosphere, it is as necessary for eighteen-year-olds to obey school rules as for minors. For example, eighteen-year-olds must comply with school smoking rules.

While eighteen-year-olds must comply with school regulations in their dealings with the school they have the same rights as the parents of minors. Thus, it is the eighteen-year-old, rather than his parent who has the right to see his school record. Similarly, it is the eighteen-year-old rather than his parent, who has the right to decide whether he participates in a particular school activity, takes a particular course, or whether he wants a hearing when the school desires to take disciplinary action against him.

It is the policy of the Seattle Public Schools to continue to look to the parents of eighteen-year-olds for direction and decisions until and unless directed otherwise by the eighteen-year-old.

E. Regulation of Student Conduct

Schools in order to accomplish their educational objectives and protect the welfare of their students must adopt rules governing student conduct. While the school does not have as broad a hand at making rules now as in the past, school rules will be upheld provided that they are reasonable and do not interfere with a student's constitutional and statutory rights. As we have already dealt with the nature of Washington students' rights, we will now focus upon the problem of interpreting "reasonable."

A rule will be considered reasonable if it is related to accomplishing the objective it was designed to achieve and if the school has the

authority to require the objective. Whether or not a school has the authority will depend largely upon whether the rule has an educational objective and the geographic area in which the rule is to be enforced.

The school generally has the authority to make and enforce rules governing the conduct of students at school or school-sponsored activities. Thus, the school has the authority to make rules that protect the health and safety of individuals and property on the school grounds and at school-sponsored activities. The school has the authority to insure that a proper learning environment prevails in the classroom and that an appropriate atmosphere prevails at extracurricular activities. Provided that a rule governing conduct at school or at school-sponsored activities has one of the above objectives and does not infringe on a student's constitutional rights it will be considered reasonable.

The school has only limited power to control the conduct of students when they are not at school or at school-sponsored activities. The school has the power to regulate other activity only if the regulation can be shown related to an educational objective. The requirement of homework is a valid rule regulating student conduct during nonschool hours since this requirement will assist a student in learning. Similarly, an athlete can be required to sleep a certain number of hours or required not to drink during the sports season *if* compliance with these rules will affect his ability to perform in a game. Generally, however, what a student does during his off-school hours is his private business, has no relationship to his achievement in school or school activities and cannot be regulated by the school.

VIII. THE SCHOOL, THE PRINCIPAL, AND THE TEACHER

A. Use of Nonteachers

Only certificated teachers can be given the responsibility of "teachers" in the Washington schools. Other individuals cannot be given this responsibility of teaching no matter how qualified or educated a school believes them to be (WAC 180-80-200(7)).

Despite the restriction on teaching by noncertificated personnel such individuals can be used constructively by a school in the following manner. First, noncertificated personnel can be used to tutor small groups of students or to assist a teacher. Second, noncertificated personnel can give occasional lectures to students. Third, noncertificated personnel can be used to supervise playground or lunchroom activity.

A noncertificated teacher cannot be utilized as the sole instructor in any course or as the sole instructor of a small group of students. This is true even if a certificated teacher chooses the curriculum and grades the written work. A noncertificated person, when performing in a tutorial role, need not remain in the same classroom as his supervising teacher.

B. Teacher Responsibilities

1. Teacher Work Day. The exact conditions of a teacher's work are governed by the contract between the teachers' organization and the school district, the individual contract negotiated between the teacher and the district and Washington statutory and administrative law. WAC 180-44-050 requires that all teachers must be at school at least one-half hour before and following the school day. The teacher

day, however, is necessarily longer than that specified in the Code in that teachers have contracted to teach children and thus have the responsibility of meeting this contractual commitment. Thus, teachers must devote as much extra time to class preparation as is necessary to enable them to effectively teach their subject matter. Teachers can also be required to attend faculty meetings as such attendance is necessary to facilitate the running of schools in an efficient, safe and orderly manner. In addition, teachers *can* be required to attend any PTSA meetings. The PTSA is especially designed to facilitate parent-teacher contact and interaction as parent-teacher interaction is necessary for the successful teaching of children.

2. Attendance. Teachers can be required to take daily attendance and attendance in each class period. Although no specific Washington statute or Administrative Code provision requires that teachers take attendance, this requirement is implicit in Washington education law. Under Washington law and all school district regulations students are required to attend school. Under WAC 180-44-010 teachers are required to maintain records appropriate to the enforcement of school rules and regulations. As the roll book is a record appropriate to the enforcement of the school requirement of attendance teachers can be required to keep such an attendance record.

In addition to being required to take attendance, teachers, under WAC 180-44-030, are required to obtain excuses from parents or guardians in case of absence, tardiness, or early dismissal. Teachers would never know which students to demand excuses from if they did not take attendance.

3. Order and Discipline. WAC 180-44-020(1) emphasizes that teachers shall maintain good order and discipline in the classroom and that neglect of this requirement is sufficient cause for dismissal.

4. Reports. The Washington Administrative Code requires that teachers keep records which are appropriate to enforcing state and local education rules and regulations. In addition, teachers are required to make evaluation of their pupils' growth and development and to make periodic reports of student development to parents, guardians and school administrators (WAC 180-44-010(1) and (3)).

C. Teacher Control of the Curriculum

The Washington Administrative Code requires that teachers follow the course of study developed by their school district and the state. A school district, therefore, has the right to control the

objectives of courses, to choose which books a teacher will use and to control the amount of time the teacher will devote to specific subjects and the development of specific skills.

Although a school district has the right to control the curriculum in the classroom, the teacher in fact is often delegated part of this responsibility, particularly in social studies and in English. Yet, even when a school or school district has delegated the authority to choose the materials used to the teacher, the school still can control the curriculum to the following extent.

First, the school can require that the materials used and classroom time be relevant to course objectives. Second, the school can require that material used not be obscene. (See discussion of obscenity in Section VII.C.7.) Third, the school can require that a teacher present both sides of controversial issues. The classroom is *not* a soap box for a teacher to express his or her ideas. Fourth, the school district can ban the use of vulgar materials.

Just as the school district administration can control the character of the curriculum, it can also control the character of the library books. The school district cannot ban books from the school library on the basis of their ideological content. On the other hand, it can ban obscene books or books in poor taste.

D. Maternity and Other Child-Related Disabilities

Under WAC 162-30-030, a school employee cannot be discriminated against because she is pregnant. Therefore, a school district can neither refuse to hire a woman or force her to leave her employment because of her pregnancy unless her pregnant state prevents her from performing her job. A pregnant employee is entitled to maternity leave for a reasonable length of time provided that she gives the school district notice of the date on which she expects to take a leave from work and the date on which she expects to return to work. The school can require a pregnant woman to submit a doctor's statement showing that it is safe for her to work.

Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth and recovery therefrom must be treated as temporary disabilities under any school health or sick leave plan.

E. Teacher Constitutional Rights Outside of the Schoolroom

In general, teachers cannot be prohibited from or punished for speaking out on public issues. Teachers, as all citizens, have a First Amendment right to express their opinions. The public has a great

deal to gain from listening to teachers express their opinions. Teacher speech, however, can be limited if it can be shown that such speech actually *interferes* with the operation of schools or impedes a teacher's performance. Most teacher speech is unlikely to create such interference. Just because a teacher's speech is critical of the school administration or incorrect does not mean that it interferes with the operation of schools.

In general, a teacher has the right to be active in whichever group he desires, even though the group may be one of which the school board does not approve. There are two exceptions to the above rule. First, the school need not condone membership of a teacher in a subversive organization if the teacher has joined the group with the intent of furthering forceful overthrow of the elected government. Second, in rare instances a school district may be able to prohibit active involvement in a group if the active membership is publicized and affects the ability of a teacher to teach and/or to get along with fellow staff members with whom a good relationship is necessary to fulfill the teacher's job responsibilities.

Teachers, as all citizens, have a right of privacy. Thus they have a right to conduct their private and sexual lives in any manner they see fit and cannot be dismissed merely for living in adultery or becoming drunk at home. The same acts which a teacher can do without fear of reprisal in private may be cause for dismissal if done in public or done openly, provided that such public conduct can be shown to have an effect on a teacher's teaching ability. (Teaching ability within this context would refer to the ability of a teacher to relate to his students, the ability of a teacher to provide an appropriate role model for his students and the ability of a teacher to function with other staff members.)

F. Constitutional and Other Rights of Teachers in the Schoolroom

1. Speech. The scope of a teacher's constitutional rights becomes considerably limited once a teacher enters the classroom. Whereas a teacher outside of the classroom is generally permitted to express "far out views" and to do so with vehemence, teachers are not permitted this freedom within the classroom. If a teacher chooses to discuss a controversial topic with students he should be careful to bring out both sides of the issue. While to some extent this can be viewed as a restriction on a teacher's First Amendment rights, in another sense it can be viewed as merely a requirement that teachers expose their students to all points of view and teach them to think for themselves.

2. Dress. Teachers, as students, can dress as they please provided their dress does not inhibit their ability to teach or to get along with faculty with whom a good relationship is necessary to fulfill their educational responsibilities.

3. Smoking. There is no constitutional right to smoke. As smoking is dangerous to one's health and as teachers provide a role model for their students, teachers can be prohibited from smoking while with their students. In addition, teachers can be prohibited from smoking in areas where smoking poses a safety hazard.

4. Flag Salute. A teacher need not physically salute a flag or recite the plege of allegiance if to do so will violate his religious or moral convictions. Such a teacher, however, should not draw attention to his nonparticipation in the flag exercises if a teacher is to fulfill his statutory duty under RCW 28A.67.050 of instilling patriotism in his pupils.

5. Records. A teacher has a statutory right under RCW 28A.58.445 to see his personnel file. If the teacher disagrees with the content of material in his file, he should be permitted to attach to the offensive material his side of the story. Alternatively, a teacher in most school districts can institute a grievance procedure to remove offensive material from his record.

G. Teacher Tenure

1. The Right to a Teaching Job with the School District Where One is Employed. In Washington all teachers have immediate tenure commencing with the first year of employment. Therefore, a Washington school district must show good cause to either nonrenew a teacher's contract for the following year or to discharge a teacher.

2. The Right to a Particular Teaching Job with the School District Where One is Employed. Although a Washington teacher has tenure from the date of his signing his initial contract, he does not have a right by law to retain his particular teaching assignment. Thus he has no right by Washington law to retain his position as a department head or as a teacher at a particular school. The teacher-school district negotiated contract, however, can give a teacher a right or semiright to a particular position.

H. Teacher Dismissal

Although a school teacher does have automatic tenure he can be removed for cause. There are two methods by which a teacher can be removed in Washington. The first method, discharge, is used to

immediately terminate a teacher. It is the route used to remove a teacher who has suddenly engaged in gross misconduct or a series of gross misbehaviors, or whose teaching inadequacies did not become evident soon enough to proceed by the nonrenewal route described below. The second method of removal, nonrenewal, is a method used to remove a teacher for the next school year. This is the method which must be utilized to remove most "problem teachers." Utilization of this method requires definitive steps by the Seattle School District by January 15 and by other districts prior to February 1. If a district fails to institute nonrenewal proceedings against the ineffective teacher prior to this statutory date it may have to retain the teacher during the next school year.

If a school district is having difficulty with a teacher and expects that the teacher may need to be removed immediately or in the following school year the school district should do two things: (1) Make a detailed, cumulative record of the teacher's shortcomings; (2) Notify its attorney immediately of the existent problem.

Both of these steps are equally important. If the school district does not keep a cumulative record of teacher performance it will lack the evidence to successfully discharge or nonrenew a teacher. If the school district does not contact its attorney it will undoubtedly fail to follow one of the statutory or judicially required procedures necessary to terminate a teacher.

Below is a list of types of behavior on the part of a teacher that could constitute grounds for nonrenewal or discharge. The list, of course, is not all-inclusive.

1) failure to maintain discipline
2) failure to teach students
3) failure to relate to students
4) physical abuse of students
4) conviction of a felony
6) public immorality
7) use of a habit-forming drug without pharmaceutical prescription
8) use of an alcoholic beverage on the school premises or at a school-sponsored activity
9) failure to follow school rules and regulations. (While a teacher can be terminated for failure to follow school rules and regulations, the teacher will have a defense to a termination based on this ground if he had no notice of the regulation. Therefore, rules governing teacher, as student, conduct should be set out in writing to avoid this problem.)

The Seattle School District has a detailed procedure for non-renewal of teachers. It guarantees fairness to the teacher and accountability.

I. The Principal

The foregoing discussion of teacher rights and responsibilities is generally applicable to the principal. The principal, as in the case of the teacher, has the responsibility to enforce order and discipline in the school and must abide by the rules and regulations of the state and the school district. The principal, as in the case of the teacher, has the right to exercise his constitutional rights outside of the school house provided that such exercise does not impair his effectiveness on the job. The principal, as in the case of the teacher, has tenure with the school district and can only be terminated if cause exists and if statutory procedures are followed. These procedures also need be followed if a principal is to be removed from his position as principal but not terminated from the district.

Some differences between the rights and responsibilities of the teacher and those of the principal necessarily exist because of the differences in their positions. Thus, the principal has the right to regulate the conduct and teaching methods of his teachers provided that he does not infringe upon the constitutional, statutory, or contract rights of teachers or on school district rules. Moreover, the principal can control curriculum provided he complies with statutory, regulatory and school district provisions and the directives of his superiors.

IX. THE SCHOOL AND A STUDENT'S PARENTS OR GUARDIAN

A. Parental Visits

This problem has been dealt with in VI.A.3.

B. Control of the Curriculum

The school and not the parent has the right to control the school curriculum. Nevertheless, the school district must, as required by WAC 180-48-010, develop a policy for allowing parents to challenge the school's choice of materials. An adequate procedure would permit a parent to discuss the choice with a person who chose the "offending material" with the right to appeal to the administrative superior of the latter person. The school district, however, is under no obligation to yield to parental pressure in this area.

C. Control of Student's Placement

A parent has no right to control the classroom or school in which his child is placed. He does have a right to discuss his grievance with the school district.

D. Right to See Records

School districts are required by WAC 180-52-025 to develop written procedures by which parents can see their children's records in the presence of school personnel. While under such procedures a parent must be given the right to see his child's permanent records and any material in his "office" file, the parent need not be given the right to see the notes of school officials, i.e., notes of a teacher, notes of school social worker. As the eighteen-year-old is an adult he, *rather than his parents*, must be given the right to see his records (see Section VII.D).

E. The Right to Remove a Child from School

Parents have the obligation to cause their children to attend school. Only for illness or for observance of religious holidays do they have a right to keep their children at home without school consent. If parents desire to have their children skip a full day or a part day of school on other occasions they must receive permission from the school.

F. Custody

If parents are legally separated or divorced only one parent will have custody of a child. At these times the school is often faced with the problem of whether or not to send the child home with the "other parent." The school should never knowingly send a child home with the parent who does not have custody or timely visitation rights. If the parent with whom a child has not been living suddenly demands to take a child home, and the school is not certain of that parent's right to have the child, the school should contact the parent who has custody to obtain permission.

If parents are not legally separated either parent has an equal right to custody of the child, and the school can send the child home with either parent.

The legal guardian of a student has the same rights as his parents. Often, however, a child is living with an individual who is neither his guardian nor his parent. In such an instance the school should attempt to gain from the real parent or guardian a signed, notarized statement stating as follows:

> I, John Doe, father of Richard Doe, have placed Richard Doe in John Smith's home. I, therefore, give John Smith the power to sign my son's report cards, the power to sign my son's field trip permission slips, and the power to give permission or sign, in place of myself, any other school related matter in which parental signature or acquiescence is ordinarily required. I also request that the_____ School contact John Smith in case of emergency and that the school follow his instructions if such an emergency should arise.

X. EMERGENCY SITUATIONS

A. The Injured Student

If a child is injured the nurse, or if the nurse is not available a teacher trained in first aid, or if no trained teacher is available any "competent" teacher, should administer first aid. The parents should simultaneously be contacted. If the parents cannot be reached and further medical attention is necessary the school should see that the child is taken to a doctor or hospital. Even in cases where a parent has been contacted the school should itself arrange for immediate transportation of a student to a hospital if the school believes immediate transportation is necessary to protect the student's health. If the school chooses to arrange for transportation by ambulance the child's parents will be liable for the bill. The school should always secure transportation by ambulance if an injury is serious or if moving the child may create complications.

Alternatively, if a child's parents cannot be reached the individual whom the parent has indicated should be contacted in case of emergency can be contacted provided that the parent has named this "emergency person" within the last school year. If, however, the "emergency person" chooses not to obtain immediate medical care for a child and the school believes such care is necessary the school itself must arrange for such medical care.

B. When Immediate Disciplinary Action is Desired

The school should not send a student home during the school day without first contacting a child's parents and insuring that a parent or a capable adult approved by the child's parents will be at home. Once

the child's parents are contacted the child can be sent home provided that either:

1. The parent or a person designated by the parent picks up the child at school;

2. The child is a student who generally walks home himself;

3. The child is a student who generally takes public transportation from school and such transportation is available for the student; or

4. The school transports the student home.

If the parents of a child over fourteen cannot be reached, the student can be sent home during the day provided the student has a practicable method of reaching his home and provided he has the key to his home.

C. The Child Who has Committed a Serious Crime

When a child has committed a serious crime on the school grounds or at a school activity or has injured another student on his way to or from school the child's parents should be contacted. In addition, if a serious crime is committed on the school premises the police, or in the case of Seattle schools School Security, should be contacted. The police have a right to take a student into custody even if his parents cannot be reached.

D. Dealing with Pushers

If the school has reliable evidence that a student or nonstudent is distributing illicit drugs on the school premises or at a school activity the police, or in the case of Seattle schools School Security, should be contacted. The drugs should, if available, be taken from the possession of the student or outsider. The student pusher should be disciplined, suspended or expelled for pushing drugs.

If the school lacks reliable evidence that "X" is selling illegal drugs, i.e., does not have at least one statement from a reliable witness stating that he observed "X" distributing illegal drugs, the school cannot take action against the suspect if the suspect is a student. If, however, the suspect is a nonstudent who continuously trespasses upon the school grounds the school may be able to obtain an injunction against the individual entering upon the school grounds. (See Section VI.A.5.)

E. Dealing with a High or Drunk Student or Nonstudent

A high or a drunk student should be removed from contact with

other students and be placed under the school nurse's supervision in the nurse's office. (If the nurse is not in school the student should be isolated from other students and placed under the supervision of school personnel.) The parents should then be contacted. If a student's parent is at home or if a responsible adult is at the student's home and the student's parent consents to sending him home the student should then be sent home provided that the parents, an individual sent by the parents, or a school employee can take the student home. Otherwise, the student must remain in school in an isolated, supervised setting. A high or drunk student should never be sent home on public transportation or to an empty home.

The school has no obligation to assist a high or drunk nonstudent but instead should bar him from the school in order to protect the student body. If the individual refuses to leave the school grounds the police, or in the case of Seattle Schools, School Security should be called for assistance.

F. Dealing with a Group of Students Who are Potentially Out of Control

While the school does not have the right to suppress the speech of students it does have the right to control student conduct and to regulate groups of students who are "out of control." A group is "out of control" for the purposes of this section if the school believes that unless the group's behavior is immediately controlled the school will not be able to conduct scheduled classes and activities or insure the safety of people and/or property at the location.

If a group appears "out of control" the school should first ask the students to stop what they are doing and/or leave the area. If the students do not respond to the verbal entreaties the school should then attempt to segregate the group leaders and/or the most unruly students from the area of disorder. These individuals should first personally be requested to leave the area. If they refuse to do so and if segregation of these students is necessary to restore order these students can then be physically removed to the office or other appropriate location. If removal of the leaders or unruly students does not calm a situation the police, or in Seattle, School Security, should be called.

Following a disorder it is appropriate to discipline any students who have broken school rules during the "disorder."

G. Dealing with Threats to the Physical Safety of School Personnel

School employees, as all citizens, have a right to be physically

safe in their persons. They have a right not to be intentionally harmed (assaulted) by others. If an irate student, parent or outsider assaults a school employee or appears ready to assault him the employee has a right to use force in self defense. No more force should be used than is necessary to ward off the apparent threat. If the school employee only uses reasonable force when threatened with harm to himself he cannot be held criminally or civilly liable for any harm he does to another.

If a school employee is assaulted the police, or in Seattle, School Security, can be contacted.

An injunction (see Section VI.A.5) can be obtained against an outsider who continuously trespasses upon the school grounds and assaults individuals while on the school grounds. The school can suspend or expel a student who assaults others.

H. Dealing with Threats to the Physical Safety of Students

The school has a duty to protect the safety of students while on the school grounds or school premises. If it appears that an individual is about to harm a student the school should attempt to prevent this and use the amount of force that appears necessary to do so. A school employee will not be held liable for injury he inflicts on an attacker if he uses no more force than appears reasonably necessary to prevent injury to the threatened student.

XI. MISCELLANEOUS SCHOOL PROBLEMS

A. Student Records and Confidential Information

Earlier, in Section IX.D, we mentioned that parents of minor students and eighteen-year-old students have a right to see student records. Here we will turn to the advisability of giving students' records to other individuals and of giving out other information about students.

The information in student records should be considered confidential information. These records can be shown to school district personnel who have a legitimate interest in seeing the information and do not seek access to the data out of plain curiosity. This material, however, should not be given to outsiders unless the material is subpoenaed or unless the parent (or in the case of an eighteen-year-old, the student) signs a written release. Thus, the school should seek written permission before revealing the content of school records to prospective employees, schools to which a student has applied, or social agencies.

In addition to access to recorded information, teachers, counselors or other school personnel often have knowledge of additional nonrecorded information about students. The question then arises whether this information should be conveyed to others. Such information should be shared with school district personnel when the communication of such information is necessary to teach, assist or deal with a student. Thus information about a student's problems, family conflicts or behavior, when relevant, can be safely communicated to administrative superiors who have authority over the student or to a school social worker or counselor who is trying to help the student. Such information should also be communicated to

the child's parents when it is material the school feels a parent should know even though the material is negative in nature. If a school employee communicates information in the above instances he will not be liable in a civil lawsuit even if the information turns out to be false.

Other than communicating nonrecorded information to parents, the school should not reveal this information to outsiders unless the parents of a minor, or in the case of the eighteen-year-old the student himself, signs a statement requesting the release of this information.

B. Advertisements in School Papers or in Sports Events Programs

A school need not permit any advertisements in school publications. Once the school chooses to permit such advertisements, however, it must allow all merchants who so desire to advertise subject to the following limitations. The school need not permit advertisement by merchants whose wares are not appropriate to the level of the majority of students who will be receiving a program. Thus, the school should not permit beer ads in sports events programs as students (minors) should not be encouraged to drink.

C. School Redress for False Accusations

If an outsider or the press makes libelous statements about school teachers or administrators the school personnel will most likely have but little legal recourse provided that the statements were not known to be false when stated or stated with reckless disregard for their truth. School personnel, however, can request that they be given the opportunity to refute such statements.

When a parent makes negative comments about a school teacher or administrator the employee should be given an opportunity to refute or deny the charges. If the criticisms of the parent will be recorded in the teacher's personnel file the teacher should be given the opportunity to place in the file a written statement of his version of the facts.

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